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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Appellant,

v.

AMERICAN CONTRACTORS  
INDEMNITY COMPANY,

Defendant and Respondent.

A112963

(San Francisco County  
Super. Ct. No. 505486)

In this appeal, the People seek to overturn a trial court order that granted respondent American Contractors Indemnity Company (ACIC) relief from a summary judgment against it arising out of the forfeiture of a bail bond posted by ACIC's agent on behalf of a criminal defendant. We agree with the People that the trial court had no statutory authority to grant ACIC's postjudgment motion, and accordingly reverse.

**I.**

**FACTS AND PROCEDURAL BACKGROUND**

On or about December 13, 2004, ACIC, through its agent Mack's Bail Bonds (Mack's), posted a bail bond in the amount of \$100,000 on behalf of Efraim Miller to obtain his release from custody in San Francisco. Miller's preliminary hearing was scheduled for December 16, 2004. Miller did not appear at his preliminary hearing, and the trial court issued a bench warrant and declared the bail forfeited pursuant to Penal

Code section 1305.<sup>1</sup> The clerk mailed a notice of the order forfeiting bail to ACIC and Mack's on January 3, 2005.

By July 26, 2005, the statutory period for exonerating the bond had passed, and the bail forfeiture order had not been set aside.<sup>2</sup> Accordingly, on that date, the trial court entered a summary judgment against ACIC for the principal amount of the bond plus the required filing fee. On August 3, 2005, the clerk prepared a demand for payment in satisfaction of the summary judgment, and served it on ACIC by mail.

On September 6, 2005—after the expiration of the statutory period, but within six months after the entry of the summary judgment—ACIC filed a motion to set aside the summary judgment, discharge the forfeiture, and exonerate Miller's bail. On September 26, 2005, ACIC submitted a supplemental declaration in support of the motion by its bail agent, Art Ortega.<sup>3</sup> Ortega's declaration stated that Miller had been arrested in San Mateo County on new charges on December 16, 2004—the date on which Miller had failed to appear and his bail had been forfeited—and had been in custody in San Mateo since that time. In support of this statement, Ortega's declaration referred to an attached exhibit characterized as an "In custody letter." Ortega also stated that on December 25, 2004, he had been requested to post bond for Miller in San Mateo County, but that he had

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise noted.

<sup>2</sup> Under section 1305, subdivision (b), if a bail surety wishes to move to exonerate a bond, it must do so within 180 days of service of the notice of forfeiture, plus 5 days if that service is by mail. (See generally *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657-658 [outlining procedure for forfeiture and exoneration of bail bonds].) We refer to the resulting 185-day time limit as the statutory period. On motion of the surety, the statutory period may be extended for an additional 180 days for good cause (§ 1305.4), but ACIC filed no such motion in this case.

<sup>3</sup> An earlier declaration by Ortega is referenced in the register of actions and in the proof of service on the motion, but only the supplemental declaration was included in the clerk's transcript on appeal. Our references to Ortega's declaration are to his supplemental declaration filed September 26, 2005.

been unable to do so because the “defendant’s property and that of his family” would not permit him to post a bond in the amount set by the San Mateo County Superior Court.

Ortega’s declaration averred that he had spoken to Miller’s attorney on December 5, 2004, and that she had told him that the San Francisco District Attorney was aware that Miller had been incarcerated in San Mateo County. He also stated that he had been informed in June 2005, both by Miller’s ex-wife and by one Tom Stevens, an “associate” of Miller’s, that Miller had agreed to a plea bargain in the San Mateo County case and would be transferred to San Francisco. Ortega acknowledged, however, that on June 20, 2005, Stevens told him that Miller’s plea bargain had not yet been finalized, and the anticipated transfer had not yet occurred.

Ortega’s declaration asserted that he did not learn until August 1, 2005, after ACIC received the summary judgment, that Miller had ultimately rejected his plea bargain in San Mateo and thus had never been transferred to San Francisco. Ortega professed that he had “worked on this case diligently throughout the [statutory] period”; that he was “sure that [Miller’s] attorney knew that [Miller] was in custody in San Mateo County”; and that he “believed that [Miller] would be transferred back to San Francisco,” and was not informed otherwise until after the time to reinstate the bond had passed. Ortega did not contend, however, that he personally had taken any steps during the statutory period to inform either the San Francisco County District Attorney’s Office, or the trial court in the case in which ACIC had posted Miller’s bond, that Miller was in custody outside San Francisco. Nor did Ortega aver that any formal “hold” had been placed on Miller by the San Francisco County District Attorney’s Office.

The People opposed ACIC’s motion to set aside the summary judgment. The trial court heard argument on the motion, and on December 14, 2005, issued an order granting the motion, setting aside the summary judgment, and exonerating the bond. The order included a finding that “the criminal defendant was arrested outside the county [within] the 180 days. See [section] 1305[, subdivision] (c)(3).” This timely appeal followed.

## II. DISCUSSION

The threshold issue presented by this case is whether the trial court had the statutory authority to set aside the summary judgment against ACIC on Miller's bond, even though ACIC did not take any action to request exoneration of the bond or relief from the forfeiture until after the statutory period had passed.<sup>4</sup> ACIC asserts two alternative bases for such authority: Code of Civil Procedure section 473 (CCP section 473), and the construction of section 1305, subdivision (c)(3) adopted by *People v. Ranger Ins. Co.* (2006) 141 Cal.App.4th 867 (*Ranger Insurance*).

The first issue was expressly decided against ACIC's position over 40 years ago in *People v. Stuyvesant Ins. Co.* (1963) 216 Cal.App.2d 380 (*Stuyvesant*). In that case, the court squarely held that relief under CCP section 473 is not available in an action to set aside a judgment forfeiting bail (*id.* at p. 382), and on that ground reversed a trial court order granting a motion that had been filed after the expiration of the statutory period (which was then 90 days<sup>5</sup>). Similarly, *People v. National Auto. & Cas. Co.* (1966) 242 Cal.App.2d 150 (*National Auto*) held that "[t]he relief from default provided by

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<sup>4</sup> This issue presents solely a question of law regarding the applicability of the relevant statutes, which we review on appeal de novo. (See *Estate of Burden* (2007) 146 Cal.App.4th 1021, 1026 [whether undisputed facts establish factual predicate for application of statute is question of law reviewed de novo on appeal].) To the extent that our holding relies on the facts of this case (e.g., the fact that Miller was arrested in San Mateo County), we have accepted the facts as expressly or impliedly found by the trial court, which we will assume for the sake of argument are supported by substantial evidence.

<sup>5</sup> The 1965 amendments to sections 1305 and 1306 extended the statutory period to 180 days. (Stats. 1965, ch. 1926, §§ 1, 2.)

section 473 of the Code of Civil Procedure does not apply since ‘The obligations of bail are governed by the statute specially applicable thereto.’ [Citations.]” (*Id.* at p. 153.)<sup>6</sup>

ACIC argues that *Stuyvesant, supra*, 216 Cal.App.2d 380, is no longer good law, because *Stuyvesant* relied on former Code of Civil Procedure section 2781, which has since been repealed. That repeal, however, did not change the rule that “[t]he forfeiture or exoneration of bail is entirely a statutory procedure, and forfeiture proceedings are governed entirely by the special statutes applicable thereto. [Citation.] Sections 1305 through 1309 govern bail forfeiture. [Citation.]” (*People v. Ranger Ins. Co.* (1998) 66 Cal.App.4th 1549, 1552.) This conclusion is reinforced by the fact that CCP section 473 is a general civil procedure statute, and “ ‘[i]t is the general rule that a special statute controls over a general statute.’ [Citation.]” (*County of Los Angeles v. Amwest Surety Ins. Co.* (1983) 147 Cal.App.3d 961, 967-968 [holding that the general summary judgment statute, Code of Civil Procedure section 437c, does not apply to summary judgments in bail forfeiture proceedings because “[t]he action filed by a county seeking to enforce against a bail bond surety the obligation under a bail bond is not . . . an adversary civil action.”].)

Finally, to hold that CCP section 473 permits a postjudgment motion to set aside a summary judgment against a bail surety would subvert the general intent of the statutory scheme governing bail bonds. In *People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193, the court interpreted section 1305.4, which permits the trial court to

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<sup>6</sup> *National Auto, supra*, 242 Cal.App.2d 150, held that a motion to vacate a forfeiture had to be not only filed, but also decided, within the statutory period. As noted in *People v. Granite State Insurance Co.* (2003) 114 Cal.App.4th 758, 769, footnote 10, this aspect of *National Auto* was superceded in 1999 by the addition to section 1305 of subdivision (i). (Stats. 1999, ch. 570, § 2.) That subdivision expressly allows a court to hear and decide a motion to vacate a forfeiture after the statutory period has expired, if the motion itself was timely filed. It does not, however, authorize the filing of an untimely motion.

extend the time within which a bail surety may obtain an order vacating forfeiture of its bond, to permit only one extension of the statutory period. In so doing, the court reasoned that to hold otherwise “would violate the policy and spirit of the statutory framework within which section 1305.4 is found which strongly favors limiting the amount of time a surety has to challenge forfeiture.” (*Id.* at p. 1199.) Applying CCP section 473 to permit a surety to move for relief from summary judgment of forfeiture would similarly undercut the Legislature’s intent in enacting strict and specific time limits governing bond forfeiture proceedings. Accordingly, we agree with *Stuyvesant, supra*, 216 Cal.App.2d 380, that CCP section 473 is inapplicable.<sup>7</sup>

That brings us to the alternative basis upon which ACIC asserts that the trial court could consider its motion to vacate the summary judgment. Section 1305, subdivision (c)(3) provides that “If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.” In *Ranger Insurance, supra*, 141 Cal.App.4th 867, the court held that although section 1305, subdivision (c)(3) does not require the court to vacate the forfeiture and exonerate the bail on its own motion, it also does not place any time limitation on the surety’s ability to move to vacate the forfeiture under that section. On that ground, the court in *Ranger Insurance* reversed a trial court’s order denying the surety’s motion to set aside a summary judgment.

The People contend that *Ranger Insurance* was wrongly decided. We need not address that issue, however, because even if correctly decided, *Ranger Insurance* does not apply to the facts of this case. As already noted, section 1305, subdivision (c)(3)

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<sup>7</sup> Because we hold that CCP section 473 does not permit bail sureties to move to set aside a summary judgment on a bail bond forfeiture, we have no occasion to consider whether ACIC established good cause to set aside the judgment under the standards set forth in CCP section 473.

applies where “outside the county where the case is located, the defendant . . . is arrested *in the underlying case* within the 180-day period . . . .” (Italics added.) In the present case, ACIC presented no proof, and the trial court did not find, that Miller was arrested *in the underlying case* in San Mateo County. To the contrary, Ortega’s declaration expressly and unambiguously states that Miller was arrested in San Mateo County “on new charges.” Thus, section 1305, subdivision (c)(3) has no application to the facts of the present case, and did not authorize the granting of ACIC’s untimely motion.

The requirement in section 1305, subdivision (c)(3) that the defendant be arrested on the charges in the underlying case makes sense in light of the overall structure and purpose of the statutory scheme. As a whole, section 1305, subdivision (c) addresses the consequences of a defendant’s voluntary or involuntary resubmission to the jurisdiction of the criminal court that accepted the defendant’s bail, within the statutory period after bail is forfeited. Presumably, a defendant’s arrest “in the underlying case,” even if it occurs outside the county, will precipitate the defendant’s return to custody in the jurisdiction in which the underlying case is pending, because there is no cause to hold the defendant for trial anywhere else. This, in turn, will result in the defendant’s resubmission to the jurisdiction of the criminal court that originally accepted the bail.

The same presumption does not apply, however, when the defendant is arrested in another county *on new charges*. The court in which the new charges are filed will have independent reasons to exercise its own jurisdiction over the defendant, and thus will not automatically return the defendant to the jurisdiction of the court in the underlying case for further proceedings. In these circumstances, as the present case exemplifies, some further action must be taken either to ensure that the defendant is resubmitted to the jurisdiction of the court that released him on bail, or to establish some other ground for exoneration of the bail.

ACIC argues that once Miller was arrested in San Mateo, there was nothing further that ACIC could or should have done within the statutory period to forestall forfeiture of

the bond. Yet by Ortega's own admission, Ortega was informed on June 20, 2005, that even though over six months had passed since Miller's arrest in San Mateo, Miller still had not been transferred to San Francisco. At that point, the last day of the statutory period (i.e., July 7, 2005) was only about two weeks away. The record does not indicate that Ortega made any attempt, during that interval, either to confirm that Miller would in fact be transferred to San Francisco within the statutory period, or to contact the San Francisco District Attorney's Office directly to verify that a hold had been placed on Miller, or at least that the prosecutor was aware of his whereabouts. Nor did ACIC file a motion to extend the statutory period under section 1305.4, or to toll it under section 1305, subdivision (e).<sup>8</sup> Accordingly, we are not persuaded by ACIC's contention.

Therefore, even if section 1305, subdivision (c)(3) permits a late motion to vacate a bond forfeiture judgment in a case where the defendant has been arrested in another county on the underlying charges—an issue on which we express no opinion—this does not mean that it permits such a motion where, as here, the defendant has been arrested in another county on new charges. Therefore, the trial court erred in granting ACIC's motion to vacate on the basis of this statute, as indicated by its order.

ACIC further contends that this case should be governed by this court's opinion in *People v. Far West Ins. Co.* (2001) 93 Cal.App.4th 791 (*Far West*). In *Far West*, an agent of the surety tracked a fugitive defendant all the way to Georgia and alerted the local authorities there, who arrested the defendant on the underlying California charges.

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<sup>8</sup> Section 1305, subdivision (e) provides that "In the case of a temporary disability, the court shall order the tolling of the [statutory] period . . . during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met: [¶] (1) The defendant is temporarily disabled by reason of . . . detention by . . . civil authorities. [¶] (2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the [statutory] period. [¶] (3) The absence of the defendant is without the connivance of the bail." We see no reason why relief under this statute would not have been available to ACIC in this case, and ACIC does not argue otherwise.



After the defendant was in custody in Georgia, however, the California police department that had originally arrested the defendant directed the Georgia authorities to release him, which they did. The prosecutor in California was never advised that the defendant had been arrested in Georgia.

The surety later filed a timely motion to exonerate the bond, relying in part on subdivisions (f) and (g) of section 1305. (*Far West, supra*, 93 Cal.App.4th at p. 794.) These subdivisions provide that where the defendant either is in custody (subdivision (f)), or has been temporarily detained (subdivision (g)), outside the jurisdiction of the court that ordered the bail forfeited, and the “prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond . . . .” The trial court denied the motion, reasoning that the California police department’s direction to release the defendant was “ ‘ . . . not sufficient to satisfy the statutory requirement that the “prosecuting agency” elect not to seek extradition.’ ” (*Ibid.*)

In reversing the trial court’s ruling, this court held that the bond should have been exonerated because “the surety [did] everything required of it under the statute and bond,” and the only reason the defendant was not brought before the court was an apparent error by a government official. In those circumstances, we reasoned, “as between the surety and the county, . . . the consequences of the error” should be borne by the county, not the surety. (*Far West, supra*, 93 Cal.App.4th at pp. 797-798, fn. omitted.) In reaching this result, we relied in part on the principle, also cited by ACIC here, that “[a]s the law disfavors forfeitures, including the forfeiture of bail, these statutory provisions must be strictly construed in favor of the surety to avoid the harsh results of forfeiture. [Citation.]” (*People v. Ranger Ins. Co.* (1992) 9 Cal.App.4th 1302, 1305; see also *Far West, supra*, 93 Cal.App.4th at p. 795; *People v. Ranger Ins. Co., supra*, 66 Cal.App.4th at p. 1552.) We also emphasized the need to construe the bail forfeiture

statutes in light of “the rule prescribing the commonsense construction of statutes so as to avoid absurd results. [Citations.]” (*Far West, supra*, 93 Cal.App.4th at p. 795.)

Thus, in effect, what this court did in *Far West* was to *construe* the language of subdivisions (f) and/or (g) of section 1305, which require the exoneration of the bond when “the prosecuting agency elects not to seek extradition,” to include the situation where the defendant was released from custody outside California on the express instructions of a government agent within the prosecuting jurisdiction. We do not disagree with this result, or with the general principles on which it was based, but do not find them applicable to this case. Our reasoning, as explained above, does not require that we *construe* section 1305, subdivision (c)(3), but only that we *apply* its plain language to the facts of this case.<sup>9</sup>

Nor does our application of the statute to these facts lead to an absurd result. In *Far West*, we relied on the fact that the surety had done everything it was obligated to do under the bond, only to have its commendable efforts to return the defendant to the court’s jurisdiction foiled at the last minute by a government employee, through no fault of the surety or its agent. Here, however, as already noted, ACIC had a number of avenues available to it under the statutory scheme by which it could have forestalled the forfeiture of the bond, yet it failed to take advantage of any of them prior to the expiration of the statutory period. Thus, it is far from an absurd result to require ACIC to bear the consequences of its inaction.

“A surety has the same opportunity as any other litigant to alert a court to judicial mistakes.” (*People v. American Contractors Indemnity Co., supra*, 33 Cal.4th at p. 663

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<sup>9</sup> It may be worth noting that in *Far West*, this court explicitly held that *only* subdivisions (f) and/or (g) of section 1305, and *not* subdivision (c)(3), provided grounds for exoneration of the bond in that case. (*Far West, supra*, 93 Cal.App.4th at p. 794.) ACIC does not contend that any portion of section 1305 other than subdivision (c)(3) would justify exoneration of the bond in this case.

[involving the same surety, represented by the same counsel as on the present appeal].)

As the present case is not the first to demonstrate, if the surety chooses to forego that opportunity and pursue a “waiting game” (*id.* at p. 665) strategy instead, it acts at its own risk.

### **III.**

#### **DISPOSITION**

The judgment is reversed. The People shall recover their costs on appeal.

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Ruvolo, P. J.

We concur:

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Sepulveda, J.

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Rivera, J.